UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 243—August Term, 1982

(Argued September 1, 1982

Decided November 15, 1982)

Docket No. 82-7468

HERBERT T. SILVER d/b/a ALLIED BOND AND COLLECTION AGENCY,

Plaintiff-Appellant,

—v.—

BRIAN J. WOOLF, IN HIS CAPACITY AS ACTING BANKING COMMISSIONER OF THE STATE OF CONNECTICUT,

Defendant-Appellee.

Before:

LUMBARD, CARDAMONE and WINTER,

Circuit Judges.

Appeal from a grant of summary judgment by the United States District Court for the District of Connecti-

cut, (M. Joseph Blumenfeld, *Judge*, holding that Connecticut may require an interstate debt collection agency to obtain a license as a condition of collecting debts from residents of Connecticut by phone or by mail. Conn. Gen. Stat. Ann. §§ 42-127–42-133a (West Supp. 1982).

Affirmed.

ROBERT N. WIENNER, Hartford, Connecticut (Robert B. Shapiro, Cohn and Birnbaum, P.C., Hartford, Connecticut, of counsel), *for Appellant*.

JOHN G. HAINES, Assistant Attorney General, Hartford, Connecticut (Carl R. Ajello, Attorney General, Hartford, Connecticut, of counsel), *for Appellee*.

WINTER, *Circuit Judge*:

Allied Bond and Collection Agency ("Allied") brought this action against the Banking Commissioner of Connecticut in the District Court for the District of Connecticut, Blumenfeld, *Judge*, seeking declaratory and injunctive relief against the enforcement of Conn. Gen. Stat. Ann. §§ 42-127–42-133a (West Supp. 1982). Allied claimed that this legislation, which requires the licensing of, and otherwise regulates, interstate debt collection agencies is unconstitutional. Judge Blumenfeld granted summary judgment for the Commissioner. We affirm.

BACKGROUND

Allied is a consumer collection agency located in Pennsylvania. It claims to collect debts on behalf of its clients from debtors located in all 50 states and in several United States territories and foreign countries. Allied has no offices, employees, or property in Connecticut and seeks to collect outstanding debts from Connecticut and debtors solely through mail and telephone communications. From 1978 through 1981, Allied had approximately 14,580 accounts in Connecticut on which it collected some $576,415.

Until 1981, Allied's clients included several major oil companies, notably Atlantic Richfield Oil Company (ARCO), Mobil Oil Corporation and Shell Oil Company. In recent years, six Connecticut residents have complained to the Banking Commissioner about Allied's collection activities. Four of the complaints received concerned Mobil, ARCO, and Shell. The Banking Commissioner contacted these companies and informed them that Conn. Gen. Stat. Ann. § 42-131a(b) prohibited creditors from engaging the services of a collection agency which had not obtained a license in Connecticut. That section states in part:

> No creditor shall retain, hire, or engage the services . . . of any person who engages in the business of a consumer collection agency and who is not licensed to act as such by the commissioner, if such creditor has actual knowledge that such person is not licensed . . .

As a result, the three oil companies ceased to engage Allied with respect to debtors located in Connecticut,

thereby reducing Allied's volume of Connecticut accounts by more than 50 percent.

On September 14, 1981, the Commissioner issued a Notice of Hearing ordering Allied to appear and to show cause why it should not be ordered to cease and desist from continuing its business without obtaining a license pursuant to Conn. Gen. Stat. Ann. § 42-127a(a), which reads:

> No person shall act within this state as a consumer collection agency, unless such person holds a license . . . from the commissioner. . . . A consumer collection agency is acting within this state if it . . . (2) has its place of business located outside this state and collects from consumer debtors who reside within this state for creditors whose place of business is located within this state; or (3) has its place of business located outside this state and regularly collects from consumer debtors who reside within this state for creditors whose place of business is located outside this state.

Allied, which does not contest its status as a "consumer collection agency," raised a constitutional challenge to the licensing requirement at the administrative hearing but the hearing examiner declined to consider it. Thereafter, Allied filed this action in the district court seeking a declaration that section 42-127a(a) was unconstitutional on its face and as applied and an injunction against the enforcement of section 42-127a(a) and section 42-131a(b), to the extent the latter might be enforced against Allied's clients. The district court granted the Commissioner's motion for summary judgment and dismissed Allied's complaint. This appeal followed. We affirm.

DISCUSSION

The regulatory scheme of the Connecticut consumer debt collection statute is not complex. Section 42-127a(a) prohibits any person from acting as a consumer collection agency within the state without having first obtained a license from the Banking Commissioner. In order to obtain a license, the debt collection agency must submit a written application, accompanied by a sworn financial statement, aggregate fees of $250, and evidence that the applicant is "of good moral character and financially responsible." Conn. Gen. Stat. Ann. § 42-127a. The Commissioner is empowered to examine a collection agency's books and records in aid of the licensing determination or the enforcement of other aspects of the statutory scheme. An applicant must also post a bond of $5,000 to ensure a true accounting of all funds collected. Conn. Gen. Stat. Ann. § 42-128a. The Commissioner may suspend or revoke a license for cause, after notice and a hearing. Conn. Gen. Stat. Ann. § 42-129a.

Section 42-131 lists certain prohibited practices. For example, a debt collection agency may not furnish legal advice, communicate with debtors in the name of an attorney, or retain or terminate an attorney in any legal action against a debtor on behalf of a creditor without having first received the creditor's written authorization to act as the creditor's agent. No such agency may solicit claims under deceptive or ambiguous contracts, advertise or threaten to advertise to sell claims, or add to any claim an amount in excess of the debtor's legal obligation. Agencies must account to the creditor for all monies collected.

Section 42-131a(a) prohibits a consumer collection agency from violating any portion of the statute's regula-

tory scheme. This section empowers the Banking Commissioner to "examine the affairs of every consumer collection agency in [the] state." Subsection (b) provides that creditors may not knowingly engage the services of an unlicensed consumer collection agency.

Allied asserts two grounds on which the Connecticut legislation is unconstitutional. First, it claims to be an exclusively interstate business with insufficient contacts in Connecticut to require it to obtain a license as a condition of collecting debts from Connecticut residents by phone or by mail. Second, Allied argues that, while the Connecticut licensing requirement and associated regulation of the conduct of debt collection are not burdensome in and of themselves, the "prospect of multiple and probably inconsistent" regulation by a large number of states would so burden firms such as Allied as to make national debt collection from a single office all but impossible. We reject both contentions.

1. *The Licensing Requirement*

Allied's *per se* challenge to the licensing requirement is based almost exclusively upon *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20 (1974). In that case, the Supreme Court invalidated a Mississippi requirement that a Tennessee cotton merchant obtain a Certificate of Authority as a foreign corporation doing business in the state before using state courts to enforce its contracts. The merchant had neither offices nor employees in Mississippi. The underlying contracts were with farmers for cotton to be grown in the future and were an integral part of a national market in cotton futures which allowed merchants such as Allenberg to stabilize their position with respect to future contracts for sale to customers in several states. Notwithstanding the fact that the contracts Allen-

berg sought to enforce were executed in Mississippi and title to the cotton passed upon delivery to a warehouse within that state, the Court held that Allenberg's contacts with Mississippi "do not exhibit the sort of localization or intrastate character," *id.* at 33, necessary to allow a state to condition access to its courts upon qualifying to do business there.

The precise impact of *Allenberg* on other factual situations is not self-evident. While Justice Douglas' opinion is at great pains to describe the "intricate interstate marketing mechanism" in cotton futures, *id.* at 29, and the essentiality to that mechanism of enforceable contracts with farmers for cotton to be grown in the future, it offers few limits to its rationale since a similarly high degree of integration is a ubiquitous feature of modern economies.

Allied is thus able to construct a plausible argument based upon *Allenberg* since it too has no offices or employees in Connecticut and its business is an integral part of the marketing of products on a national scale by national or multinational corporations. The debts it seeks to collect directly affect commerce since defaults upon consumer contracts and costs of collection must affect the price of goods distributed in interstate commerce and, therefore, the amount of that commerce. Nevertheless, we would have to blind ourselves to the many important distinctions between *Allenberg* and the present case were we to reverse solely upon the basis of that decision. These distinctions fall into two categories, either of which alone might be sufficient to uphold the Connecticut statute, both of which together are more than adequate. First, the contacts between Allied's business and Connecitcut are significantly different from those involved in *Allenberg*. Second, unlike the situation in *Allenberg*, Congress has

affirmatively indicated that it considers the kind of state regulation at issue here to be desirable.

Unlike *Allenberg*, the licensing scheme here is an integral part of a precise regulatory scheme. The function of the license is to provide an easy means of enforcing the substantive regulation of debt collection. Thus, a collection agency which violates the regulatory scheme may lose its license and the creditor firms which hire it can then be forced to change agencies. *Allenberg* involved a statute applicable to all foreign corporations without regard to either the nature of their business or the interest of the state in regulating it. The licensing was not an integral part of an otherwise valid regulatory statute and was thus viewed by the majority as a naked restriction on interstate firms. The licensing requirement here, on the other hand, must be viewed as part of an overall regulatory scheme relating to debt collection.[1]

Debt collection practices have long been viewed as a proper matter for regulation by the states. Quite apart from statutory regulation, *see* Scott and Strickland, *Abusive Debt Collection—A Model Statute for Virginia*, 15 Wm. & Mary L. Rev. 567, 573-578 (1974), such practices have generated a substantial amount of state litigation sounding in common law tort. *See generally*, Annot., 64 A.L.R.2d 100 (1959); Annot. 15 A.L.R.2d 108 (1951). Indeed, the principal source of resistance to federal regulation of debt collection has been the view that it is a matter "best left to the states." S. Rep. No. 382 95th Cong., 1st Sess. 9, *reprinted in* 1977 U.S. Code Cong. & Ad. News 1695, 1703 (separate views of Messrs. Schmitt, Gam and Tower). The reason for state involvement in

[1] Allied has explicitly eschewed any particularized challenge to the Connecticut regulatory scheme other than the licensing requirement. We may assume for purposes of this case, therefore, that the regulations and prohibitions of the legislation are constitutional.

such regulation is self-evident. While the methods of communication utilized by debt collectors may, as in Allied's case, be interstate, the perceived abuses and consequent harm—abusive language and threats followed by feelings of insult and humiliation and an urge to pay a disputed debt solely to avoid further harassment—are almost entirely localized.

Moreover, agencies such as Allied are not enforcing their own contracts, as in *Allenberg*. Instead, they generally seek to collect on contracts entered into by companies which have a multitude of contacts with Connecticut. The contracts and resultant debts are entirely local and much of the Connecticut regulation enforced by the licensing requirement effectuates important local interests, *e.g.*, requiring that monies paid to collection agencies be used to satisfy the underlying debts. Conn. Gen. Stat. Ann. §§ 42-131(i),(k),(l). Finally, a requirement that companies doing business in Connecticut not hire unlicensed collection agencies is a method of preventing firms doing business in Connecticut from evading concededly valid regulation of their contract enforcement methods by hiring out-of-state agencies.

Moreover, debt collection practices are intimately related to the use of state courts and the regulation of the practice of law in those courts. Some provisions of the Connecticut statute are explicitly aimed at preventing the illegal practice of law and otherwise regulate the relationship of collection agencies to Connecticut attorneys. *See e.g.*, Conn. Gen. Stat. Ann. §§ 42-131(a),(b),(e). We think *Allenberg* no more prohibits a licensing requirement as a remedy for such regulation of debt collection than it prevents Mississippi from requiring that the Allenberg Cotton Co. hire an attorney licensed or admitted *pro haec vice* in that state to initiate contract actions in its courts.

We believe, therefore, that the local interests served by the use of a licensing mechanism as a regulatory device in the case of the Connecticut statute are significantly different from those at issue in *Allenberg*. Even Justice Rehnquist's dissent in *Allenberg*, for example, mentions as significant local interests only the facilitation of tax collection, ease in service of process and dissemination of financial information. 419 U.S. at 40-41. The majority, however, left open the question of whether Allenberg's contacts were sufficient to allow imposition of local taxes and service of process in Mississippi. Under these circumstances, we decline to read *Allenberg* as establishing a *per se* rule prohibiting the licensing of interstate businesses in order to facilitate the enforcement of an otherwise valid scheme of state regulation. Indeed, this appears to be the substance of the Supreme Court's decisions on the licensing of interstate businesses. *See, e.g., Robertson v. California*, 328 U.S. 440, 452-459 (1946).

Allenberg is distinguishable upon a second ground: in that case, Congress had not expressed any views as to the legitimacy of the Mississippi law; in the present case, there are affirmative indications that Congress believes state regulation of debt collection agencies to be desirable.

That is a crucial distinction for whatever decision a federal court might render as to the validity of a state law regulating commerce in the absence of congressional action, Congressional approval of such laws is decisive in their favor. The power of federal courts to invalidate state laws burdening interstate commerce is derived from the so-called negative implications of the Commerce Clause. Although a matter of some doubt and much debate in earlier times, *see generally* Brown, *The Open Economy: Justice Frankfurter and the Position of the Judiciary*, 67

Yale L.J. 219, 219-223 (1957); Dowling, *Interstate Commerce and State Power*, 27 Va. L.Rev. 1, 2-8 (1940), the power of federal courts to invalidate state laws which "retard, burden or constrict the flow of . . . commerce," *H.P. Hood & Sons v. DuMond*, 336 U.S. 525, 533 (1949) is now well established but subject to a critical qualification stemming from the Commerce Clause. That provision is not a direct prohibition on state action; instead it empowers the federal legislature to regulate the subject matter. As such, it provides, at best, a negative implication supporting such judicial authority. Indeed, one distinguished constitutional scholar has pointed out that "the [negative] textual inference never was a very good one," Black, *Structure and Relationship in Constitutional Law* 21 (1969) and that the disabilities of the states so far as interstate commerce are concerned flow as much from the political structure of a constitution establishing a single nation as from the text of the Commerce Clause. That is a point well taken and one which fully explains judicial invalidation of burdensome or discriminatory state laws where Congress is silent. Nevertheless, the constitutional text empowering Congress is directly relevant so far as the relative powers of different branches of the federal government over such laws are concerned. A state law which a federal court might invalidate where Congress is silent will thus be upheld where Congress has indicated its desire to allow states to act. *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408 (1946).

The federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o (Supp. IV 1980) legislates in the same area regulated by the Connecticut statute in issue. It contains the following provision:

> This subchapter does not annul, alter or affect, or exempt any person subject to the provisions of this

> subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

18 U.S.C. § 1692n.

We regard this provision as more than sufficient to authorize the licensing of interstate debt collection agencies as a method of enforcing otherwise valid regulatory measures. Congress hoped that the states would address the problem of abusive debt collection methods and enact "stronger" laws. S. Rep. No. 382, *supra* p.8, at 6. Unlike statutes such as that at issue in *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27 (1980), involving clauses which preserved only the existing state power in the particular area, section 1692n affirmatively expresses Congress' approval of more stringent state legislation. As we indicate in the next section, section 1692n may not be a *carte blanche* for any and all state legislation, no matter how burdensome or even prohibitive, but it certainly authorizes a simple licensing requirement as a remedial measure in aid of otherwise valid state regulation. Allied has demonstrated no particularly onerous burden imposed by such a requirement but instead has relied upon a *per se* argument based on a literal reading of *Allenberg*. Since *Allenberg* did not involve a federal statute such as section 1692n, it is wholly distinguishable.

2. *The Cumulative Burden of State Regulation*

Allied also argues that, while the Connecticut statutory scheme does not in and of itself impermissibly burden commerce, "the prospect of 30 or more state licenses, each with its own regulatory idiosyncracies, would make the conduct of a national business from a single location impossible. . . ." Brief for Appellant at 24. This argument is quite distinct from the challenge to the licensing requirement. Local interests may be insufficient to justify state lesgislation which, because it differs from the laws of other states, significantly burdens commerce. *Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429 (1978) (truck length limits interfering with the "interlining" of interstate trailers); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) (idiosyncratic mudguard law interfering with "interlining"); *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945) (train limit law forcing interstate trains to be broken up and reformed at the Arizona line). Moreover, while section 1692n authorizes state laws affording "greater . . . protection" to debtors, we are not prepared to say that it authorizes state legislation which in the aggregate might effectively prohibit interstate debt collection agencies from operating.

Appellant's argument fails, however, because it is totally speculative. Apart from arguing that compliance with differing state requirements as to recordkeeping might be prohibitively costly, Allied simply has not designated statutory regulations here or elsewhere which in the aggregate might constitute an impermissible burden on commerce. Unlike *Southern Pacific*, *Bibb*, and *Raymond*, a specific burden resulting from disparate state regulation simply has not been shown. No colorable claim is made, for example, that the cumulative impact of state licensing fees or bonding requirements is prohibitive, that specific

regulatory requirements or prohibitions in the different states are so disparate as to limit interstate operations, or even that Allied itself has been unduly limited in conducting its business as a consequence of state regulation. So far as recordkeeping requirements are concerned, Allied makes no claim that Connecticut even requires particular methods of recordkeeping, much less that such a requirement in connection with the differing requirements of other states is unduly burdensome. Instead, Allied asks us to render the legislation invalid because of "the prospect" of an impermissible aggregate burden on commerce. Courts are not in the business of deciding the legality of such "prospects." Judge Blumenfeld thus properly granted summary judgment.

Affirmed.

EXHIBIT F

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HERBERT R. SILVER, d/b/a Allied Bond and Collection Agency	:	
v.	:	CIVIL NO. H-81-872
BRIAN J. WOOLF, in his capacity as Acting Banking Commissioner of the State of Connecticut	:	

MEMORANDUM OF DECISION

In this action for a declaratory judgment, the plaintiff, the sole proprietor of a consumer collection agency located in Philadelphia, Pennsylvania, contends that Section 42-127a(a) of the Connecticut General Statutes is unconstitutional on its face and as applied to the plaintiff under the due process and commerce clauses of the United States Constitution.

Conn. Gen. Stat. § 42-127a(a) requires that all consumer collection agencies acting within the State of Connecticut obtain a license from the State Commissioner of Banking. It provides that

> [a] consumer collection agency is acting within this state if it . . . (3) has its place of business located outside this state and regularly collects from consumer debtors who reside within this state for creditors whose place of business is located outside this state.

Id. The plaintiff characterizes his business as a "national collection agency which on behalf of its clients seeks to collect debts from debtors located in all of the 50 states and in a number of U.S. territories and foreign countries." It has no offices, employees or property in Connecticut and seeks to collect outstanding debts from Connecticut debtors solely through mail and telephone communications.

Beginning in July 1980 the Consumer Credit Division of the Connecticut Banking Department received a number of complaints from Connecticut consumer debtors concerning the collection practices of the plaintiff's company. Defendant's Motion for Summary Judgment Exhibits A-1 through A-17. The Department began a correspondence with the plaintiff in order to determine if his company was subject to the licensing requirements of Conn. Gen. Stat. § 42-127a. The plaintiff responded by refusing to provide any information concerning the scope of his activities in Connecticut on the basis of his position that his company was not subject to Connecticut law because its only contacts with the state are by mail and telephone communication. After receiving additional complaints about the plaintiff's company, the Department told the plaintiff that it considered his company subject to the licensing requirements of Conn. Gen. Stat. § 42-127a and began informing the plaintiff's clients that his company was not licensed as required by Connecticut law and that, therefore, referral of accounts to his collection agency for collection from Connecticut debtors is prohibited by Conn. Gen. Stat. § 42-131a(b).[1] Three of the plaintiff's clients have been contacted by the Department so far.

[1]Conn. Gen. Stat. § 42-131a(b) provides:

> No creditor shall retain, hire, or engage the services or continue to retain or engage the services of any person who engages in the business of a consumer collection agency and who is not licensed to act as such by the commissioner, if such creditor has actual knowledge that such person is not licensed by the commissioner to act as a consumer collection agency.

On September 14, 1981 the Banking Department commenced formal proceedings against the plaintiff's company to enforce the licensing requirement. A hearing was held on November 4, 1981, and on March 30, 1982 the Banking Commissioner issued a decision ordering the plaintiff to cease and desist from acting as a consumer collection agency in Connecticut without a license.[2]

On November 10, 1981 the plaintiff filed this action under 42 U.S.C. § 1983 seeking a declaratory judgment that Conn. Gen. Stat. § 42-127a(a) is unconstitutional on its face and/or as applied to the plaintiff. He also seeks an injunction to restrain the Banking Commissioner from (1) enforcing Conn. Gen. Stat. § 42-127a(a) against the plaintiff and (2) enforcing Conn. Gen. Stat. § 42-131a(b) against the plaintiff's clients insofar as it relates to plaintiff's status under Conn. Gen. Stat. § 42-127a(a). The defendant has moved for summary judgment. A hearing was held before this court on January 25, 1982 on the plaintiff's motion for a preliminary and permanent injunction and on the defendant's motion for summary judgment.

The two grounds upon which the defendant urges this court to dismiss this suit without reaching the merits are considered *in limine*.

I. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Although there were state administrative proceedings pending at the time the federal complaint was filed, the fact that the plaintiff did not exhaust his administrative remedies prior to filing this lawsuit does not preclude this court from taking jurisdiction.

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[2]Enforcement of the Banking Commissioner's order has been temporarily enjoined by a temporary restraining order entered by this court on April 12, 1982.

While a plaintiff is generally required to exhaust his administrative remedies prior to commencing an action seeking judicial relief, *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938), the Supreme Court has held on numerous occasions that state administrative remedies need not be exhausted prior to commencing a federal civil rights action under 42 U.S.C. § 1983. *E.g., Ellis v. Dyson*, 421 U.S. 426, 432-33 (1975); *Gibson v. Berryhill*, 411 U.S. 564, 574-75 (1973). In this circuit this line of cases has been interpreted to "mean not that state administrative remedies need never be exhausted prior to commencement of § 1983 suits, but merely that the exhaustion requirement should not be given 'wooden application.' " *Swan v. Stoneman*, 635 F.2d 97, 103 (2d Cir. 1980) (quoting from *Eisen v. Eastmen*, 421 F.2d 560, 569 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970)). Exhaustion is not required where it would be futile because the question of the adequacy of the administrative remedy is "for all practical purposes coextensive with the merits of the plaintiff's constitutional claims," *Fuentes v. Roher*, 519 F.2d 379, 387 (2d Cir. 1975), or where the issue is one where there is no need for the "exercise of agency discretion or expertise," *Touche Ross & Co. v. Securities & Exchange Commission*, 609 F.2d 570, 577 (2d Cir. 1979). In addition, an agency can in some circumstances be found to have waived the exhaustion requirement by stipulation or by adopting a final position prior to completion of the entire administrative process. *Greenberg v. Bolger*, 497 F. Supp. 756, 772 (E.D.N.Y. 1980).

The plaintiff contends that the federal Constitution prevents the state from enforcing its licensing requirement against the plaintiff. His claim is solely one of federal constitutional law on which the agency has no expertise. In addition, the hearing examiner had made it clear prior to the institution of this federal suit that she would not make any decision on the constitutional issues. There is no reason, therefore, to apply the doctrine requiring the exhaustion of administrative remedies.

II. ABSTENTION

The doctrine of equitable restraint requires that a federal court abstain from enjoining pending state enforcement proceedings at least in the absence of extraordinary circumstances, such as bad faith or harassment on the part of the state prosecution, or a facial attack on a patently unconstitutional statute. *Younger v. Harris*, 401 U.S. 37, 53-54 (1971). It has been applied to a variety of state civil proceedings. *E.g., Moore v. Sims*, 442 U.S. 415 (1979) (state proceeding to remove custody of children from their parent); *Trainor v. Hernandez*, 431 U.S. 434 (1977) (enforcement action to attach property pursuant to a state action to recover wrongfully paid welfare benefits); *Juidice v. Vail*, 430 U.S. 327 (1977) (state's contempt process); *Huffman v. Pursue*, 420 U.S. 592 (1975) (state nuisance proceeding). The doctrine is based upon the rationale that principles of equity and federalism preclude a federal court from interfering with an ongoing state proceeding which offers the federal plaintiff a fair forum for the resolution of his federal claims. *See, e.g., Younger v. Harris*, 401 U.S. at 44.

The defendant in this case contends that because the plaintiff has a right to appeal the Banking Commissioner's decision to the state Superior Court under Conn. Gen. Stat. § 4-183 the principles of equitable restraint require this court to abstain in favor of the state's judicial process. The defendant characterizes the administrative appeal afforded by Conn. Gen. Stat. § 4-183 as a continuation of the administrative enforcement proceeding and, therefore, views the state proceedings as ongoing at the present time. In fact, there are no state proceedings pending at the present time. The administrative proceedings before the Banking Commission have been completed. All that remains to be done is the enforcement of the Commissioner's order which has been temporarily restrained by this court. The plaintiff has no state forum in which to pursue his constitutional challenge to this licensing statute unless he chooses to seek

judicial review of the Commissioner's decision under Conn. Gen. Stat. § 4-183.

The fact that the plaintiff has the option of seeking judicial review is not sufficient to require this court to abstain. A federal civil rights plaintiff is not required to exhaust state *judicial* remedies prior to coming to federal court. *E.g., Steffel v. Thompson,* 415 U.S. 452, 472-73 (1974); *Gibson v. Berryhill,* 411 U.S. 564, 574 n.13 (1973). Abstention is not required in this case because there is lacking "the most fundamental requirement for the exercise of equitable restraint[,] . . . the existence of an *ongoing* state proceeding where the federal plaintiff's claims can be heard," *Aristocrat Health Club of Hartford v. Chaucer,* 451 F. Supp. 210, 216 (D. Conn. 1978) (emphasis added).

I turn next to consider the merits.

III. THE MERITS

A. The Propriety of Summary Judgment

The plaintiff challenges the constitutionality of Conn. Gen. Stat. § 42-127a on its face and as applied to the plaintiff's company. The defendant has moved for summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure, the relevant portion of which is set forth in the margin.* Despite his initial concession that this case is "entirely free of material factual dispute," Pre-Hearing Memorandum of the Plaintiff at 26, the plaintiff now attempts to defeat the defendant's motion for summary judgment by characterizing two issues as raising material factual disputes. He contends that (1) a genuine issue of material fact "may exist" as to the extent of plaintiff's contacts with Connecticut and that (2) the magnitude of the burden placed on the plaintiff by enforcement of Connecticut's licensing statute raises a genuine issue of

* "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

material fact. Plaintiff's Statement Re Material Facts in Dispute filed January 19, 1982.

The court finds that no genuine dispute exists as to either of these factual issues and that, therefore, the case is appropriate for resolution by summary judgment. On the question of the extent of the plaintiff's contacts with Connecticut, the plaintiff stipulated at the administrative hearing that "there is a regular course of contact with debtors located in the State of Connecticut conduct[ed] solely by mail and phone calls from the respondent's [the plaintiff herein] office in Philadelphia." Transcript of November 4, 1981 hearing at 19. On the basis of this stipulation, the court finds that there is no disputed factual issue concerning the extent of the plaintiff's contacts with Connecticut. Whether a regular course of contact conducted solely by mail and phone is sufficient to enable the state to subject the plaintiff to its licensing statute is solely a question of law appropriate for resolution by summary judgment.

Despite the plaintiff's assertion to the contrary, there also does not appear to be a significant dispute as to the magnitude of the burden placed upon the plaintiff by this licensing statute. The defendant has submitted an affidavit which clarifies precisely what the Connecticut Banking Department's procedures are in enforcing its licensing statute. The plaintiff has not contradicted these sworn statements that (1) the Connecticut Banking Department does not require a consumer collection agency to convert from a cash basis accounting system to an accrual basis accounting system and that (2) the Department's policy is not to require an inspection of an out-of-state licensee's books and records unless there has been a complaint which resulted in formal proceedings. The extent of the burdens placed on the plaintiff by this licensing statute has been established, and any question concerning whether these burdens can be imposed consistent with the due process and commerce clauses of the United States Constitution is solely an issue of law appropriate for summary judgment.

B. The Commerce Clause

The primary thrust of the plaintiff's constitutional challenge is based upon his contention that Conn. Gen. Stat. § 42-127a(a) imposes an unconstitutional burden on interstate commerce in violation of Article I, § 8 of the United States Constitution. The plaintiff contends that his business as a debt collector is one conducted solely through interstate commerce and that under a doctrine most recently expressed in *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20 (1974), a state cannot condition an interstate business's right of access to its markets by requiring such a business to obtain a license. The defendant argues that such a per se rule is not the law and that at any rate the plaintiff's business is not one involving purely interstate commerce. The defendant asserts that the appropriate standard for judging the constitutionality of Connecticut's licensing scheme is the balancing test enunciated in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). The plaintiff disagrees that the *Pike* standard applies but argues that, at any rate, Conn. Gen. Stat. § 42-127a(a) cannot be sustained even under such a balancing test.

1. The Applicable Constitutional Standard

The first issue to be resolved is the appropriate legal standard to apply in judging the constitutionality of Conn. Gen. Stat. § 42-127a(a). In most situations, the rule expressed in *Pike v. Bruce Church*, 397 U.S. at 142, applies:

> Where the [state] statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree.

Id. (citations omitted). This standard requires the court to balance the state's interest in the regulation against the burden it imposes on interstate commerce.

The plaintiff cites a line of authority which he reads as requiring a different approach when "purely interstate commerce" is involved. These cases involve situations where a company engaged in purely interstate commerce is required by a state to register as a foreign corporation in order to have access to the state's courts. *Allenberg Cotton Co. v. Pittman,* 419 U.S. 20 (1974); *Eli Lilly & Co. v. Sav-On Drugs,* 366 U.S. 276 (1961) (dictum); *Sioux Remedy Co. v. Cope,* 235 U.S. 197 (1914). The plaintiff reads these cases as establishing an absolute rule precluding a state from requiring that a purely interstate business obtain a license from the state in order to have access to state markets. He characterizes his company as such a purely interstate business and, therefore, concludes that he cannot be subjected to Connecticut's licensing requirement.

The plaintiff's attempt to reduce the problem to the meaning ascribed to the single phrase, "purely interstate commerce," is not supported by *Allenberg Cotton Co. v. Pittman,* 419 U.S. 20. *Allenberg* involved a cotton merchant who purchased cotton from a Mississippi farmer for sale in other states. When the merchant sued the farmer for the contract price in a Mississippi court, his complaint was ultimately dismissed due to his failure to register with the state as a foreign corporation. *Id.* The Court, stressing that the intricate interstate cotton marketing exchange requires federal protection under the commerce clause, held that, despite incidental intrastate aspects, the transaction was one within the "stream of interstate commerce," *id.* at 30, and that, therefore, the state's "refusal to honor and enforce contracts made for interstate or foreign commerce is repugnant to the Commerce Clause," *id.* at 34. Professor Laurence Tribe interprets this case as being

> strongly influenced by the fact that the state . . . seemed to be interfering with the operation of the national futures market in cotton by preventing interstate purchasers who had failed to qualify as "foreign corporations" under local law from effectively protecting themselves against unexpected price increases.

L. Tribe, *American Constitutional Law* 344 (1978). The Court in *Allenberg* was concerned with protecting the interstate commodities market itself. *Allenberg* should not be read to establish a per se rule that bars a state from regulating purely interstate businesses solely because of their interstate character. The Seventh Circuit has interpreted the *Allenberg* line of cases as representing one application of the *Pike* balancing test rather than establishing an absolute rule that state regulation of purely interstate commerce is "void ab initio." *Aldens, Inc. v. LaFollete*, 552 F.2d 752 (7th Cir.), *cert. denied*, 434 U.S. 880 (1977).

In *Eli Lilly & Co. v. Sav-On Drugs*, 366 U.S. 276 (1961), the Court held that although a state cannot require a foreign corporation to obtain a certificate of authority to do business within the state if the corporation's activities are wholly interstate,

> it is equally well settled that if [the corporation] is engaged in intrastate as well as interstate aspects [of its business] the state can require it to get a certificate of authority to do business. In such a situation, [the corporation] could not escape state regulation merely because it is also engaged in interstate commerce.

Id. at 279. In *Eli Lilly* a drug manufacturer which sold goods to wholesalers within New Jersey for subsequent sale in interstate commerce also engaged in service and promotional activities aimed at ultimate consumers of its products who lived in New Jersey. *Id.* The Court held that

the company was engaged in intrastate as well as interstate trade and, as a result of this local aspect of its business, it could be subjected to state regulation. *Id.* at 284.

The plaintiff in the case at bar engaged in substantial intrastate activities. His company performs services for its clients within Connecticut by contacting Connecticut debtors by phone and mail and attempting to collect outstanding debts owed to his clients. The fact that this service is performed exclusively by mail and phone does not alter the fact that it is a service performed intrastate.

> [So] long as the interstate trader's conduct has a "connection in fact" with a state producing an effect within a state, the interstate character of his conduct is only an element of the *Pike* interest-balancing analysis.

Aldens, Inc. v. LaFollette, 552 F.2d 745, 750 (7th Cir.), *cert. denied,* 434 U.S. 880 (1977). The plaintiff's activities in this case have a substantial impact within Connecticut. The manner in which he conducts his business affects the economic, psychological and social well-being of numerous Connecticut citizens. As the United States Congress has declared,

> abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

15 U.S.C. § 1692. Congress has recognized that the states have an interest in regulating consumer debt collection practices as well as the federal government. 15 U.S.C. § 1692n.[3] Since Congress has recognized the intrastate as

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[3]The federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.*, although it provides detailed federal regulation of consumer debt

well as interstate nature of the plaintiff's business this court is not inclined to come to any other conclusion. At any event, it is clear that the plaintiff's activities in Connecticut have intrastate or local effects as well as interstate aspects.

2. The Constitutionality of Conn. Gen. Stat. § 42-127a(a) under *Pike v. Bruce Church*

Applying the standard of *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970),[4] the first question which must be resolved is whether Conn. Gen. Stat. § 42-127a(a) discriminates against out-of-state or interstate commerce. A straightforward reading of the statute exhibits no preference or protection of any sort for local as opposed to non-resident collection agencies:

> (a) No person shall act within this state as a consumer collection agency, unless such person holds a license then in force from the commissioner authorizing him to so act. A consumer collection agency is acting within this state if it
>
> > (1) has its place of business located within this state;
> >
> > (2) has its place of business located outside this state and collects from consumer debtors who reside within this state for creditors whose place of business is located within this state; or

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3 continued

collection agencies explicitly states that consistent state legislation is not preempted by the federal statute. 15 U.S.C. § 1692n.

Section 1692 also resolves the supremacy clause issue which was raised by plaintiff's complaint but not argued or briefed.

[4] *See* page 9 *supra*.

> (3) has its place of business located outside this state and regularly collects from consumer debtors who reside within this state for creditors whose place of business is located outside this state.

Conn. Gen. Stat. § 42-127a. Local agencies and out-of-state agencies serving local creditors are subject to the licensing requirement regardless of the extent of their collection activities within Connecticut. Out-of-state agencies collecting on behalf of out-of-state creditors, on the other hand, are subject to the state's regulation only if they regularly collect from Connecticut consumer debtors. Limiting the reach of the statute to such regular contact with the state ensures that (1) the statute embraces only those foreign agencies which have sufficient contacts with Connecticut to sustain the state's regulation under the due process clause, *see International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and (2) that the state has a strong enough interest in the activity being regulated to justify the burden being placed upon interstate businesses, *see Pike v. Bruce Church*, 397 U.S. at 142.

Conn. Gen. Stat. § 42-127a, thus, makes a distinction between intrastate and out-of-state agencies only to the extent required to assure that the statute does not run afoul of the United States Constitution. It imposes equal or greater responsibilities upon domestic collection agencies than it does on out-of-state agencies. I am not confronted, therefore, with a case of "local favoritism or protectionism" imposing disproportionate burdens on out-of-state businesses. *See Lewis v. B.T. Investment Managers, Inc.*, 447 U.S. 27, 42-43 (1980).

Since this statute does not discriminate against interstate commerce, the plaintiff's commerce clause challenge must be resolved by balancing the state's interest against the burden on interstate commerce. *Pike v. Bruce Church*, 397 U.S. at 142. This inquiry requires consideration of three factors:

(1) whether the legislation serves a legitimate local public interest; (2) whether the legislation has only on incidental effect on interstate commerce; and (3) whether the local public interest justifies the statute's impact on interstate commerce.

New England Accessories Trade Ass'n v. Browne, 502 F. Supp. 1245, 1255 (D. Conn. 1980).

In this case the legitimacy of the state's interest is clear. Congress has itself recognized the importance of the states' interest by explicitly providing that the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.*, does not preempt the field and that the states, therefore, can regulate consumer collection agencies as long as their regulation is consistent with the federal legislation. 15 U.S.C. § 1692n.[5] In the plaintiff's case, numerous complaints have been made by Connecticut residents to the Banking Commission concerning the plaintiff's company. These facts convincingly demonstrate the significant local public interest which the Commissioner has in restraining fraudulent or unfair trade practices by consumer collection agencies. Reasonable and non-discriminatory legislation

[5]Where Congress has specifically endorsed state regulation, it is possible to conclude that a court need not weigh the state's local interest against the burden on interstate commerce since, in effect, Congress has already done so. *Aldens, Inc. v. Packel*, 524 F.2d 38, 50 (3d Cir. 1975), *cert. denied sub nom Aldens v. Kane*, 425 U.S. 943 (1976). The Supreme Court, however, has indicated that a standard non-preemption clause, such as section 1692n, is not to be construed as an affirmative grant of power to the states to burden interstate commerce in the absence of an express statement of congressional intent to sustain state legislation from attack under the commerce clause. *New England Power Co. v. New Hampshire*, ___ U.S. ___, 50 U.S.L.W. 4223, 4226-27 (Feb. 24, 1982). Although I will not interpret section 1692n as a resolution of the commerce clause issue in this case, it is clearly relevant to several aspects of commerce clause analysis since it represents a precise congressional recognition of the importance of state regulation in this field.

aimed at preventing such practices clearly serves an important and legitimate local public interest.

The extent of the burden imposed upon interstate commerce by Conn. Gen. Sat. § 42-127a(a) has been the subject of a great deal of argument by the parties in this case. The plaintiff argues that the burden is excessive on primarily two grounds. First, he contends that since his company is a national debt collection agency he will be subjected to a licensing requirement in many of the 50 states if this court sustains Connecticut's licensing statute. His second argument is that, in order to obtain a license from the Connecticut Banking Commission he must change significantly the manner in which he maintains his books and records. The defendant contends that the burdens actually imposed upon the plaintiff's company are minimal and justified by the public interests served by this regulation.

The plaintiff's contention that this court must consider the cumulative burden imposed upon a national collection agency, such as the plaintiff's company, by the combined regulation of the several states and the federal government reveals a misunderstanding of the reach of commerce clause protection. He apparently views the commerce clause as a limitation upon the states' power to burden interstate businesses. In fact, the purpose of the commerce clause is to protect interstate commerce itself, *i.e.*, the free flow of goods through interstate markets. *See, e.g., Allenberg Cotton v. Pittman*, 419 U.S. at 29. As the Supreme Court has recently stated, the commerce clause "protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulation." *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127-28 (1978). A company which seeks to do business in all 50 states must bear the cost of doing business in those states. That cost includes complying with all applicable national and state laws. Congress has recognized that this is a subject matter on which the states may legislate despite the existence of federal regulation. 15 U.S.C. § 1692n. It has implicitly

decided, therefore, that whatever burden on interstate commerce may result from this combination of state and national regulation is justified by the states' interest in regulating this industry.

In any event, the actual burdens imposed upon collection agencies subject to Conn. Gen. Stat. § 42-127a are minimal. The state charges all consumer collection agencies an investigation fee of $50 and a licensing fee of $200. These fees are reasonably related to the costs of investigating, licensing and regulating all licensed agencies. They are "sufficiently small fairly to represent the cost of governmental supervision. . . ." *Union Brokerage Co. v. Jensen*, 322 U.S. 202, 210 (1944). The requirement that a $5,000 bond be posted is more than reasonable. A company which utilizes a cash basis accounting system is not required to convert to or keep additional records based upon an accrual basis accounting system. It is the policy of the Banking Commission to require a collection agency to produce its records and books only in the event that formal proceedings are instituted as a result of a complaint filed by a creditor or debtor. Otherwise, the provision of a financial statement will satisfy the requirement that the Commissioner is entitled to examine a licensee's books and records "as often as he deems necessary." Conn. Gen. Stat. § 42-127a(b). Requiring a company to provide a financial statement is a very minimal burden. Where formal proceedings have been brought against a collection agency the state's interest clearly rises to the extent necessary to justify the production of the company's actual books and records. In summary, whatever minimal burden is imposed upon collection agencies by Connecticut's licensing process is more than justified by the state's interest in regulating the practices of these companies. At any rate, the plaintiff has failed to show how the responsibilities imposed upon collection agencies by Conn. Gen. Stat. § 42-127a in any fashion burdens the interstate credit market.

I conclude, therefore, that whatever minimal burdens, if any, Conn. Gen. Stat. § 42-127a may impose upon interstate commerce when it is applied to a national consumer debt collection agency such as the plaintiff's are more than justified by the considerable state interests served by this regulation. Requiring an out-of-state agency which regularly collects from debtors within the state to obtain a license from the State Banking Commissioner is a reasonable component of Connecticut's regulatory scheme. In view of Congressional recognition of the importance of the states' interest in regulating this industry, and the fact that Conn. Gen. Stat. § 42-127a(a) does not substantially burden interstate commerce, the plaintiff's commerce clause challenge must fail.

C. The Due Process Clause

The plaintiff also claims that his company has insufficient contact with the State of Connecticut to allow the state to regulate its activities consistent with the requirements of due process.

Due process limitations upon a state's power to exercise jurisdiction over non-residents are usually discussed in the context of challenges to a state court's assumption of jurisdiction over the persons of out-of-state defendants. *E.g., International Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Hanson v. Denckla*, 357 U.S. 235 (1958). It is true, as the plaintiff states, that the due process clause also limits the power of a state to subject a non-resident to regulation under its substantive laws. The plaintiff, however, contends that a more stringent test applies in the later situation. He cites state authority to the effect that

> the question of whether a foreign corporation is transacting business so as to require a certificate of authority must be determined on the complete factual picture presented in each case, and . . . the

> corporation's activities must be more substantial than those which would suffice to subject it to service of process.

Sawyer Savings Bank v. American Trading Co., 176 Conn. 185, 190, 405 A.2d 635 (1978) (citations omitted). In that case, however, the Connecticut Supreme Court was merely interpreting a statutory test of what constitutes the transaction of business within the state under state law. *Id.* at 188. The case does not support the plaintiff's position that due process requires more contact with a state to sustain a state's substantive regulatory jurisdiction than to support a state court's *in personam* jurisdiction.

As pointed out by Justice Douglas' concurring opinion in *Travelers' Health Ass'n v. Virginia*, 339 U.S. 643 (1950), there may be some distinction between the constitutional standard applied in a case of substantive state regulation and that applicable to a question of a court's *in personam* jurisdiction:

> [A creditor's] ability to sue [an out-of-state company in Virginia] is not necessarily the measure of Virginia's power to regulate. . . . It is the nature of the state's action that determines the kind or degree of activity in the state necessary for satisfying the requirements of due process. What is necessary to sustain a tax or to maintain a suit by a creditor . . . is not in my view determinative when the state seeks to regulate . . . within its borders.

Id. at 653. But whether or not the limitations of due process as applied to a state court's ability to assert *in personam* jurisdiction are equated with those applicable to the power of the state to apply its substantive regulatory jurisdiction over non-residents, as can be implied from the majority opinion in *Travelers Health Ass'n v. Virginia*, 339 U.S. at 648, the requirements of due process are certainly met in this case.

In addressing a due process challenge to a state's assertion of regulatory jurisdiction over out-of-state discount securities brokers Judge Merhige of the Eastern District of Virginia stated that

> [t]he determination as to the state's power, under the due process clause, to regulate the activities of non-residents is made by reference both to the extent of the non-resident's contact with the state, and to the nature and extent of the state's interest in exercising its authority.

Underhill Assoc., Inc. v. Coleman, 504 F. Supp. 1147, 1150 (E.D. Va. 1981). The plaintiffs in the *Underhill* case had an even stronger due process argument than the plaintiff at bar because there the securities brokers did not themselves initiate contact with state residents. Here it is the plaintiff who initiates contact. In both cases the sole means of contact between the out-of-state companies and state residents was by phone and mail. I, therefore, find Judge Merhige's reasoning persuasive and follow his lead in concluding that

> [f]or due process purposes, it sufficies that plaintiffs' activities within the state produce effects within [Connecticut] - effects which the state has an interest in regulating.

Id.

The plaintiff in this case contacts an average of approximately 3,000 Connecticut debtors annually. The plaintiff stipulated at the administrative hearing before the state agency that his company contacts Connecticut debtors regularly and with some frequency. Such regular conduct of business within Connecticut produces substantial local effects. *See* 15 U.S.C. §§ 1692, 1692n. The state's interest in subjecting plaintiff's company to its licensing

regulation, therefore, is sufficient to sustain the statute against both a commerce clause and a due process challenge.

IV. CONCLUSION

For the reasons stated above, I hereby grant the defendant's motion for summary judgment and dismiss the case. It is

SO ORDERED.

Dated at Hartford, Connecticut, this 6th day of May, 1982.

/s/ M. Joseph Blumenfeld
M. Joseph Blumenfeld
Senior United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HERBERT R. SILVER, d/b/a Allied Bond and Collection Agency	:	
v.	:	
BRIAN J. WOOLF, in his capacity as Acting Banking Commissioner of the State of Connecticut	:	CIVIL ACTION NO. H-81-872

JUDGMENT

This action having come on for consideration of the Defendant's Motion for Summary Judgment before the Honorable M. Joseph Blumenfeld, Senior United States District Judge; and,

The Court having considered the Motion and all papers filed in support of and in opposition to the Motion, and the Court having filed its Memorandum of Decision on May 6, 1982, granting the Defendant's Motion for Summary Judgment,

It is accordingly ORDERED, ADJUDGED and DECREED that Judgment be and is hereby entered in favor of the Defendant, dismissing the Plaintiff's Complaint.

Dated at Hartford, Connecticut, this 7th day of May, 1982.

SYLVESTER A. MARKOWSKI
Clerk, United States District Court

By: /s/ John K. Henderson, Jr.
John K. Henderson, Jr.
Deputy-in-Charge

§ 42-127. Consumer collection agency. Definitions

The following terms, as used in sections 42-127 to 42-133, inclusive, shall have the following meanings, unless a different meaning is clearly indicated from the context:

(a) "Person" means and includes individuals, partnerships, associations and corporations;

(b) "Consumer collection agency" means any person engaged in the business of collecting or receiving for payment for others of any account, bill or other indebtedness from a consumer debtor, including any person who, by any device, subterfuge or pretense, makes a pretended purchase or takes a pretended assignment of accounts from any other person of such indebtedness for the purpose of evading the provisions of sections 42-127 to 42-133a, inclusive. It includes persons who furnish collection systems carrying a name which simulates the name of a consumer collection agency and who supply forms or form letters to be used by the creditor, even though such forms direct the consumer debtor to make payments directly to the creditor rather than to such fictitious agency. It further includes any person, firm or corporation which, in attempting to collect or in collecting his or its own accounts or claims, from a consumer debtor, uses a fictitious name or any name other than his or its own name which would indicate to the consumer debtor that a third person is collecting or attempting to collect such account or claim. It shall not include individuals regularly employed for a regular wage or salary upon the staff or as employees of any person not engaged in the business of consumer collection agency, banks, lenders licensed by the banking commissioner under chapter 647, abstract companies doing an escrow business, real estate brokers or companies conducting a railway express business subject to the supervision of the department of public utility control, any public officer or person acting under order of court, any member of the bar of this state or any person appointed by or acting for any

public service company, provided any such person so appointed and so acting is not authorized to initiate or make any collection efforts;

(c) "Commissioner" means the banking commissioner of the state;

(d) "Consumer debtor" means any natural person, not an organization, who has incurred indebtedness for personal, family or household purposes;

(e) "An organization" means a corporation, partnership, association, trust or any other legal entity or an individual operating under a trade name or a name having appended to it a commercial, occupational or professional designation;

(f) "Creditor" is a person who retains, hires, or engages the services of a consumer collection agency.

(1967, P.A. 882, § 19, eff. Jan. 1, 1968; 1971, P.A. 539, § 1; 1975, P.A. 75-486, § 64, eff. Dec. 1, 1975; 1977 P.A. 77-614, § 162, eff. Jan. 1, 1979; 1978, (P.A. 78-226, § 1; 1978, P.A. 78-303, § 54, eff. Jan. 1, 1979; 1980, P.A. 80-482, § 333, eff. July 1, 1980.)

§ 42-127a. License required. Application, issuance, renewal. Examination of records

(a) No person shall act within this state as a consumer collection agency, unless such person holds a license then in force from the commissioner authorizing him so to act. A consumer collection agency is acting within this state if it

(1) has its place of business located within this state;

(2) has its place of business located outside this state and collects from consumer debtors who reside within this state for creditors whose place of business is located within this state; or

(3) has its place of business located outside this state and regularly collects from consumer debtors who reside within this state for creditors whose place of business is located outside this state.

(b) Any person desiring to act within this state as a consumer collection agency shall make a written application to the commissioner for such license in such form as the commissioner prescribes. Such application shall be accompanied by a financial statement prepared by a certified public accountant or a public accountant, the accuracy of which is sworn to under oath before a notary public by the proprietor, a general partner, or a corporate officer duly authorized to execute such documents, and a license fee of two hundred dollars and an investigation fee of fifty dollars, such license fee to be returned if the license is not granted. The commissioner shall cause to be made such inquiry and examination as to the qualifications of each such applicant as he deems necessary. Each applicant shall furnish satisfactory evidence to the commissioner that he is a person of good moral character and is financially responsible. Upon satisfying himself that such applicant is in all respects properly qualified and trustworthy and that the

granting of such license is not against the public interest, the commissioner may issue to such applicant a license, in such form as he may adopt, to act within this state as a consumer collection agency. Any such license issued by the commissioner shall be in force only until the first day of May following the date thereof, but may be reissued by the commissioner, in his discretion and without formality other than proper application accompanied by a renewal fee of two hundred dollars and satisfactory proof that such applicant at that time possesses the required qualifications for license. To further the enforcement of this section and to determine the eligibility of any person holding a license, the commissioner may, as often as he deems necessary, examine his books and records, and may, at any time, require a licensee to submit such a financial statement for the examination of the commissioner, so that he may determine whether the licensee is financially responsible to carry on a consumer collection agency business within the intents and purposes of sections 42-127 to 42-133a, inclusive. Any financial statement submitted by a licensee shall be confidential and not public record unless introduced in evidence at a hearing conducted by the commissioner.

(c) No person, partnership, association or corporation licensed to act within this state as a consumer collection agency shall do so under any other name or at any other place of business than that named in the license. Not more than one place of business shall be maintained under the same license but the commissioner may issue more than one license to the same licensee upon compliance with the provisions of this chapter as to each new licensee. Any licensee holding, applying for, or seeking renewal of more than one license may, at its option, file the bond required under section 42-128a separately for each place of business licensed, or to be licensed, or a single bond, naming each place of business, in an amount equal to five thousand dollars for each place of business.

(1971, P.A. 539, §§ 2, 3; 1973, P.A. 73-284; 1973, P.A. 73-328; 1973, P.A. 73-341; 1981, P.A. 81-292, § 12.)

§ 42-131. Prohibited practices

No consumer collection agency shall: (a) Furnish legal advice or perform legal services or represent that it is competent to do so, or institute judicial proceedings on behalf of others; (b) communicate with debtors in the name of an attorney or upon the stationery of an attorney, or prepare any forms or instruments which only attorneys are authorized to prepare; (c) purchase or receive assignments of claims for the purpose of collection or institute suit thereon in any court; (d) assume authority on behalf of a creditor to employ or terminate the services of an attorney unless such creditor has authorized such agency in writing to act as his agent in the selection of an attorney to collect the creditor's accounts; (e) demand or obtain in any manner a share of the proper compensation for services performed by an attorney in collecting a claim, whether or not such agency has previously attempted collection thereof; (f) solicit claims for collection under ambiguous or deceptive contract; (g) refuse to return any claim or claims upon written request of the creditor, claimant or forwarder, which claims are not in the process of collection after the tender of such amounts, if any, as may be due and owing to the agency; (h) advertise or threaten to advertise for sale any claim as a means of forcing payment thereof, unless such agency is acting as the assignee for the benefit of creditors; (i) refuse or fail to account to its clients for all money collected within sixty days from the last day of the month in which said money is collected; (j) refuse or intentionally fail to return to the creditor all valuable papers deposited with a claim when such claim is returned; (k) refuse or fail to furnish at intervals of not less than ninety days, upon the written request of the creditor, claimant or forwarder, a written report upon claims received from such creditor, claimant or forwarder; (*l*) commingle money collected for a creditor, claimant or forwarder with its own funds or use any part of a creditor's, claimant's or forwarder's money in the conduct of its business; (m) add any charge or fee to the amount of any claim which it receives for collection unless

the consumer debtor is legally liable therefor, in which case, the charge or collection fee may not be in excess of fifteen per cent of the amount actually collected on the debt; (n) use or attempt to use or make reference to the term "bonded by the state of Connecticut," "bonded" or "bonded collection agency" or any combination of such terms or words, except that the word "bonded" may be used on the stationery of any such agency in type not larger than twelve-point; or (o) engage in any activities prohibited by sections 42-127 to 42-133a, inclusive.

(1971, P.A. 539, § 8; 1981, P.A. 81-183.)

§ 42-131a. Prohibited practices within and without state. Examination of affairs

(a) No consumer collection agency shall engage in this state in any practice which is prohibited in section 42-131 or determined pursuant to sections 42-131b and 42-131c to be an unfair or deceptive act or practice, nor shall any consumer collection agency engage outside of this state in any act or practice prohibited in said section 42-131. The commissioner shall have power to examine the affairs of every consumer collection agency in this state in order to determine whether it has been or is engaged in any act or practice prohibited by sections 42-131 to 42-131c, inclusive.

(b) No creditor shall retain, hire, or engage the services or continue to retain or engage the services of any person who engages in the business of a consumer collection agency and who is not licensed to act as such by the commissioner, if such creditor has actual knowledge that such person is not licensed by the commissioner to act as a consumer collection agency.

(1971, P.A. 539, § 7; 1978, P.A. 78-226, § 2.)

§ 42-131b. Hearing. Cease and desist order. Subpoenas. Appeal. Penalty for violation of order

(a) Whenever the commissioner has reason to believe that any person has been engaged, or is engaging, in violation of sections 42-131 to 42-131c, inclusive, in any act or practice prohibited in section 42-131 and that a proceeding by him in respect thereto would be to the interest of the pubic, he shall issue and serve upon such person a notice, in the form required under subsection (b) of section 4-177, of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty days after the date of the service thereof. At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person. The commisssioner, upon such hearing, may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence or other documents which he deems relevant to the inquiry. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the superior court for the judicial district of Hartford-New Britain or for the judicial district where such person resides, on application of the commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof. Statements of charges, notices, orders and other processes of the commissioner under sections 42-131 to 42-131c, inclusive, may be served in the manner provided by law for service of process in civil actions.

(b) If, after such hearing, the commissioner determines that the act or practice in question is defined in section 42-131 and that the person complained of has engaged in such act or practice in violation of sections 42-131 to 42-131c, inclusive, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such act or practice.

(c) Repealed. (1981, P.A. 74-254, § 11.)

(d) No order of the commissioner under sections 42-131 to 42-131c, inclusive, shall relieve or absolve any person affected by such order from any liability under any other laws of this state.

(e) Whenever any person violates a cease and desist order of the commissioner made pursuant to this section, the commissioner may bring an action, through the attorney general, for contempt in the superior court for the judicial district of Hartford-New Britain. Upon proof of the violation to the satisfaction of the court, such person shall be ordered by the court to forfeit and pay to the state a sum not to exceed fifty dollars for each violation, except that, for each violation found by the court to be wilful, the amount of such penalty shall be a sum not to exceed five hundred dollars.

(1971, P.A. 539, § 9; 1972, P.A. 108, § 9, eff. Sept. 1, 1972; 1974, P.A. 74-254, §§ 9, 11; 1976, P.A. 76-436, § 638, eff. July 1, 1978; 1978, P.A. 78-226, § 3; 1978, P.A. 78-280, §§ 1, 5, eff. July 1, 1978.)

§ 42-131c. Unfair or deceptive practices. Hearing. Injunction

(a) Whenever the commissioner has reason to believe that any consumer collection agency is engaging in this state in any act or practice in the conduct of such business which is not defined in section 42-131, that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a notice, in the form required under subsection (b) of section 4-177, of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 42-131b. The commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person. If such report charges a violation of sections 42-131 to 42-131c, inclusive, and if such act or practice has not been discontinued, the commissioner may, through the attorney general, at any time after ten days after the service of such report, cause a petition to be filed in the superior court for the judicial district wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pendente lite. If the court finds that the act or practice complained of is unfair or deceptive, that the proceeding by the commissioner with respect thereto is to the interest of the public and that the findings of the commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

(b) Whenever any person acts within this state as a consumer collection agency and does not hold a license then in force from the commissioner authorizing him so to act, the commissioner may bring an action, through the attorney general, in any court of competent jurisdiction to enjoin such person from acting within this state as a consumer collection agency. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted. The court shall not require the commissioner to post a bond.

(1971, P.A. 539, § 10; 1974, P.A. 74-254, § 10; 1978, P.A. 78-226, § 4; 1978, P.A. 78-280, § 2, eff. July 1, 1978.)

§ 42-131d. Commissioner's powers

The powers vested in the commissioner by sections 42-131 to 42-131c, inclusive, shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices prohibited or declared to be unfair or deceptive, and the commissioner may issue such regulations as may be necessary for the conduct of the consumer collection agency business.

(1971, P.A. 539, § 11; 1973, P.A. 73-428.)

§ 1692n. Relation to State laws

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title.

(May 29, 1968, P. L. 90-321, Title VIII, § 816, as added Sept. 20, 1977, P. L. 95-109, 91 Stat. 874.)